

# Developing Country Goals and Strategies for the Millennium Round

*Constantine Michalopoulos*

Strategies developing countries should adopt in the next series of multilateral negotiations under the World Trade Organization (WTO).



## Summary findings

Many developing countries have been reluctant to participate in multilateral trade negotiations except for those on agriculture and services, topics mandated under previous World Trade Organization (WTO) decisions. Michalopoulos argues that developing countries can gain significant benefits from a broader WTO Millennium Round of negotiations but must develop strategies for participating in it.

Different groups of countries will have different interests, but developing countries as a group may want to include additional issues in the new Round, especially industrial tariffs and trade-related aspects of intellectual property rights.

It may also be to their advantage to include discussions on trade-related environmental issues and government procurement, if they obtain the institutional support they need to meet their commitments under any new agreements.

Other topics should be resisted because they are premature or counterproductive or do not promise net benefits for most developing countries.

The new Round should be a single undertaking, to maximize tradeoffs across issues and for political economy reasons: to permit liberalizing forces everywhere to exert pressure on governments to liberalize world trade. But there should not be too many issues, as that would strain the capacities of the poorer and least developed economies.

In a new WTO Round, developing countries should be prepared to exchange liberalizing trade concessions on a most-favored-nation basis. Liberalization of their own trade in exchange for improved access to the markets of their trading partners, most of which are other developing countries, is the only way to maximize benefits from multilateral trade negotiations. Efforts to obtain special and differential treatment should focus on establishing realistic transition periods and technical assistance to address constraints on their institutional capacity.

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## **DEVELOPING COUNTRY GOALS AND STRATEGIES FOR THE MILLENNIUM ROUND**

**Constantine Michalopoulos\***

\* The author is Special Economic Advisor at the WTO on secondment from the World Bank. The views expressed in this paper are solely those of the author and should not be in any way attributed to the WTO or the World Bank. He wishes to thank Sam Laird and Frank Wolter of the WTO, Otto Genne, Deputy Permanent Representative of the Netherlands to the WTO, Esperanza Duran of AITIC and Will Martin of the World Bank for helpful comments on earlier drafts of this paper.

## SUMMARY

In the next few months developing countries will need to develop strategies for their participation in a series of multilateral trade negotiations under the auspices of the WTO. Many developing countries have been reluctant to participate in negotiations other than on agriculture and services, topics which have been mandated under previous WTO decisions. This paper argues that developing countries can derive significant benefits from a broader WTO Millennium Round of negotiations. While the interests of different groups of countries will differ, there is a number of important issues beyond agriculture and services, which developing countries as a group may wish to include in a new Round, especially those of industrial tariffs and TRIPS. It may also be advantageous that environment and government procurement be included in such a Round, provided appropriate assurances regarding the provision of institutional support to permit developing countries to meet their commitments can be assured. Other topics should be resisted for inclusion because they are either counterproductive, premature or do not hold promise for net benefits for large groups of developing countries.

The new Round should be a single undertaking in order to maximize the opportunities for trade-offs across issues and for political economy reasons, i.e. to permit liberalizing forces in both developed and developing countries to exert pressure on governments for a liberalized trade environment world-wide. But the Round should not contain too many issues, as it would strain the institutional and implementation capacity of many developing countries, especially the Least Developed.

In a new WTO Round developing countries should be prepared to exchange mutually liberalizing trade concessions, because that is the only way to maximize the benefits they obtain from multilateral trade negotiations. Their focus on special and differential treatment should be on the establishment of realistic transition periods and technical assistance to address institutional capacity constraints.

## **DEVELOPING COUNTRY STRATEGIES FOR THE MILLENNIUM ROUND**

### **I. Introduction**

As developing countries approach the new millennium, they will need to develop strategies for participation in a series of important trade negotiations under the auspices of the WTO: negotiations on further liberalization of trade in agriculture and services are scheduled to start in 1999-2000, as is a review of the TRIPS agreement; and the WTO Ministerial meeting scheduled for November 1999, for which preparations are already under way, may result in the decision to launch a new Millennium Round of trade negotiations.

Developing countries strategies for these negotiations should address the scope of the future negotiations, the extent and basis of their participation, the degree and nature of liberalizing commitments they would be prepared to make and those they would seek to obtain from their trading partners. No single strategy would suit them all. Developing countries members of the WTO have a range of different trading interests. Accordingly, they will each need to develop different strategies and pursue them in the context of coalitions with other members—whether developing countries or not.

The purpose of this paper is threefold: (a) to identify and analyse the issues that are likely to be considered for inclusion in future multilateral trade negotiations under the auspices of the WTO; (b) to explore the interests of different groups of developing countries in each of these issues; and (c) to suggest strategies whose end-objective would be to further the integration of developing countries into the multilateral trading system. The analysis will consider the advantages and disadvantages for developing countries of an inclusive Millennium Round (MR) as opposed to participating in sectoral negotiations as well as the scope of negotiations in such a Round and the basis of developing country participation—i.e. whether they emphasize negotiations based on the mutual exchange of liberalizing commitments or whether they focus on seeking special and differential treatment (S & D) from their trading partners.

The paper is organized as follows: first, there is a general review of current developing country trade policies and attitudes towards trade reform and multilateral trade liberalization with an emphasis on the differing priorities of various developing country groups as these are emerging in the preparations for the November WTO Ministerial. Second, there is an analysis of the various subjects that are likely to come up for negotiation, some which are already agreed and some which are quite contentious. The next

section contains a discussion of strategies for developing country participation in the upcoming negotiations. The final section contains a summary of conclusions and recommendations.<sup>1</sup>

## **II. The Trade Policy Environment and the Preparations for the 1999 WTO Ministerial**

During the last decade, developing countries have made great progress in liberalizing their trade regimes. Various studies have shown that: (a) applied tariffs have been substantially lowered from their levels in the 1980's and many countries have bound a significant number of tariff lines in the context of the Uruguay Round Agreements (URA); (b) the overall use of non-tariff barriers to trade has decreased significantly in practically all countries; (c) a start has been to liberalise trade in services as part of the URA; (d) in general, the overall incidence of government intervention has declined. As a consequence developing countries have on the whole become far better integrated in the multilateral trading system than they were a decade ago<sup>2</sup>.

At the same time, a number of important issues remain: For example, many developing country tariff bindings are at levels much higher than applied tariffs creating uncertainty to investors and exporters wishing to access developing country markets as well as an opportunity for resurgent protectionism; while the overall use of non-tariff barriers to trade has decreased, the use of trade remedies such as antidumping has increased—indeed in recent periods anti-dumping cases brought by developing countries have exceeded those by industrial countries [Miranda *et. al.*, 1998]. There is also rising evidence that institutional weaknesses in many developing countries, in particular the Least Developed (LDC) and low income countries, are making it difficult for them to implement WTO commitments in many areas, but especially in Trade-Related Intellectual Property Rights (TRIPS), Sanitary and Phytosanitary Measures (SPS), Technical Barriers to Trade (TBT), and Customs Valuation (WTO 1997-1998; UNCTAD 1998).

It can be argued that a dualism has emerged in terms of the participation of developing countries in the WTO: there is a group of perhaps 20-25, mostly middle—higher income developing countries, primarily from Latin America and Asia, which have become pretty much fully integrated into the multilateral trading system: They participate actively in the WTO, they abide by the same rules, use similar types of trade remedies such as antidumping as more developed members, and take advantage of

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<sup>1</sup> The study is similar in structure and objectives to one prepared in advance of the UR (Balassa & Michalopoulos, 1986).

<sup>2</sup> See Martin and Winters, 1996; Finger *et.al.*, 1996; Drabek and Laird, 1998; Michalopoulos, 1999b

the opportunities offered by dispute settlement. On the other hand, there are as many as 50-60 developing country members of the WTO which are not effectively integrated in the multilateral trading system and their participation in the WTO is marginally different from their limited involvement with the GATT in the previous decade (Michalopoulos 1999a).

Market access opportunities have also generally improved for most developing countries in the aftermath of the UR. Tariffs on manufactures in industrial country markets have declined as have non-tariff barriers on most products—especially in agriculture, as a consequence of tariffication (OECD, 1997). Voluntary Export Restraints (VERs) have been eliminated among WTO members, while anti-dumping actions declined after 1995 -- only to surge again more recently. On the other hand, there are still tariff peaks in several product groups, in both agriculture and manufactures; the Agreement on Textile and Clothing seems to have resulted in limited, if any, actual liberalization of the sector so far in major markets (WTO, 1997); several recent trade disputes suggest that provisions in the SPS and TBT agreements carry the potential of being used as non-tariff measures; and a number of countries in Africa and elsewhere have already lost or are in danger of losing market access as a consequence of dilution of preferences previously enjoyed in developed country markets—especially the EU.

While there has been undeniable progress in the trade policies of developing countries and in the market access environment for their exports, the Asian crisis and the economic slowdown in 1998-1999, have fuelled new protectionist tendencies in both developed and developing countries. While actual increases in protection have so far been limited, there are ominous signs: The increasing rate of anti-dumping actions in the US and EU in 1998, the pressure for more protection against steel imports in the US and, possibly, the EU, are all signs of protectionism in developed country markets. In the developing countries there have been tariff increases in a number of countries ( Mexico, Philippines) as well as increased import monitoring ( Argentina, Brazil). Finally, the postponement of the second round of tariff cuts under Information Technology Agreement (ITA) in which both developed and developing countries participate, is another cause of concern.

This environment has led governments in some developing countries, especially in East Asia, which depend on the openness of international market for the restoration of their economic growth, to endorse further trade liberalization efforts. In others however, governments have questioned the wisdom of further liberalization. In still others, especially the LDCs and many in Africa, which are only still marginally integrated into the multilateral trading system, policies and attitudes are clouded with

uncertainty: the International Financial Institutions, on whom many of these countries rely for financial support, continue to urge their governments to adopt liberal trade regimes. Yet the Asian crisis, has heightened government concerns about the impact of globalization on fragile economies with pervasive poverty. Most of these countries also feel that they can not shoulder the additional liberalization commitments of a new round of multilateral negotiations simply because they do not have the institutional capacity to do so: their institutions are having difficulty in coping with implementing the previous round of commitments under the URA, let alone accommodate new ones.

In this complex and uncertain international environment, discussions have been underway in the WTO for the preparation of the November 1999 Ministerial Meeting which is to reach agreement on the scope and content of future multilateral trade negotiations. Preparations for the third session of the WTO Ministerial Conference are proceeding along four different tracks, agreed in the 1998 WTO Ministerial: (a) Implementation issues related to the URA; (b) Negotiations and future work agreed upon in Marakesh ( e.g. negotiations on agriculture and services); (c) possible future work on the basis of the program initiated at the WTO Singapore Ministerial Meeting in 1996 and the follow up to the 1997 WTO High Level Meeting on LDCs; and (d) new Issues that could be the subject of multilateral trade negotiations.

Developing countries have been at the forefront of arguing that the WTO should not undertake negotiations on any new topics unless the URA have been "fully implemented". Egypt, India and Pakistan have been providing the leadership on this position for a significant group of countries, which includes many among the poorest and LDCs. These are countries which, on the whole, have less liberal trade regimes and weaker institutional infrastructure in support of international trade. These are also countries which have tended to emphasize the special and differential aspects of their participation in the WTO (see below).

In a way the arguments put forth by these countries are eerily reminiscent of arguments by some of the same countries in the years before the UR was launched. At that time, India and Egypt (with Brazil) led the developing country opposition to the launching of what eventually became the Uruguay Round on the grounds that the "Framework Agreement" of the Tokyo Round—which essentially contained the special and differential provisions in favor of developing countries under the GATT—as well as the results of 1982 GATT Ministerial and the work program of the GATT, had not been fully implemented (Michalopoulos, 1985, pp.18-19, 57).



But it is fair to say that in the context of the preparations for the 1999 Ministerial, a large number of developing countries, reflecting the views of different groups, have focused on different aspects of inadequacies in the implementation of the URA: In general, some groups of countries, the ASEAN, the textile exporters, the CAIRNS group, have tended to emphasize the flaws in the way the WTO agreements have been implemented which have been damaging to their trading interests. Other countries, especially, but not exclusively, lower income ones in Africa and elsewhere, have been focusing on special and differential aspects of the agreements and the lack of implementation of the largely "best efforts" type of S&D commitments developed countries have made in practically all WTO agreements, the insufficient technical assistance provided and the inadequacy of the transition periods.<sup>3</sup>

The Appendix contains a summary of the main concerns about implementation and the groups of developing countries broadly associated with them. The summary is not exhaustive and does not purport to cover all the points raised by all developing countries<sup>4</sup>. There are two issues of implementation, however, that deserve particular attention as they affect large groups of developing countries: the adequacy of technical assistance provided and the transition periods envisaged under the URA in the light of continued weaknesses in the institutional capacities of developing countries.

The WTO agreements contain numerous references to the desirability of developed country members and international institutions to provide technical assistance to developing countries in areas in which they are hampered by institutional capacity weaknesses such as TRIPS, TBT, SPS etc.<sup>5</sup> The integrated program of technical assistance to the LDCs launched after the WTO High Level Meeting on Trade-related Technical Assistance to LDCs has made only limited progress in addressing these problems (WTO, 1999c); and technical assistance needs are faced by many low income developing countries, not only LDCs. Sometimes, the problem may not be the availability of funding, but rather the lack of an integrated approach among donors and recipients.

The WTO agreements also provide for extensions in the time frame over which certain obligations under the agreements are to be implemented by developing and least developed countries. Time extensions

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<sup>3</sup> There are apparently at least seventy five such references in the WTO agreements (WTO, 1999a).

<sup>4</sup> Other issues raised by developing countries not covered in detail, involved implementation of customs valuation procedures, safeguards, the impact of the agreements on Least Developed countries, notification, and accession. Several developed countries also raised questions of implementation in many of the same areas.

<sup>5</sup> See *inter alia* SPS Article 9.1; TBT Article 11, 12.7; Implementation of GATT Article VII-- Article 20.3; Pre Shipment Inspection, Article 1.2; TRIPS Article 67; DSB Article 27.2; TPRM Section D.

have been provided for a variety of obligations assumed e.g. under the TRIPS Agreement, in subsidies and countervailing and in the Agreement on Agriculture. The transition periods negotiated at the conclusion of the UR, were rather arbitrarily set and bear little relation to the time it takes to build the appropriate institutions to implement the commitments made. In some cases, the time limits for the extensions are rapidly approaching and there is little evidence that countries have made sufficient progress in institution building to permit them to implement their obligations fully. In other cases, developing countries had to submit notifications to the WTO to avail themselves of particular S&D provisions. Some did and many did not. And there is little reason to believe that those that failed to notify were aware of the options they had and chose not to avail themselves of the latitude provided.

Complaints about "implementation" also involve staking out a bargaining position by developing countries which can be used as a bargaining chip later on to fend off developed country demands for liberalization commitments in some new areas which many do not wish to pursue. In the 1980's these involved trade in services which many developing countries vehemently opposed for inclusion in the UR. In the 1990's they may involve such topics as investment, labour standards, or the environment.

### **III. The Built-in Agenda for Negotiations**

There are two agreed topics for negotiations: Agriculture and Services. In addition there are on-going negotiations on non-preferential rules of origin which, if not concluded by the end of the year may have to be folded in a new Round (Croome, 1998).

#### **A. Agriculture**

Developing countries' interests in agricultural trade vary considerably. First, there is the group of major exporters of agricultural commodities ( Argentina, Thailand) which are members of the Cairns Group (for a listing see the Appendix). These countries' position is already clear. They will be looking to: (a) early, total elimination and prohibition of export subsidies which tend to undermine the competitive position of efficient developing country producers; and in the same connection, seek to regulate the provision of export credits; (b) deep cuts in tariffs, removal of non-tariff barriers, increase in trade volume under tariff- quotas so as to enhance market access prospects; (c ) elimination of trade distorting domestic support measures (WTO, 1998a).

Second, there is a large group, consisting of the net food importing developing countries (NFIDC) and others, with a significant agricultural sector which produce but also import food, and export various agricultural products.<sup>6</sup> Past policies in many of these countries tended to penalize rather than support the agriculture sector. Two kinds of concerns have been raised by several of these countries. First, while supporting reductions in export subsidies and trade distorting domestic supports in developed countries, the limits to aggregate support and export subsidies contained in the agreement ( and their possible further tightening in the new negotiations), would limit their capacity to increase support to the agriculture sector should they in the future decide to do so.<sup>7</sup> Second, that although reduction in export subsidies by developed countries will be beneficial to their own domestic agricultural production, the resulting increase in prices of foodstuffs would increase foreign exchange outlays for poor, net food importing countries which can ill afford them.

While the UR agreement on agriculture focused on distortions primarily introduced to agricultural trade by developed country practices, it contains provisions which permit developing countries to increase support to agriculture ( and to poor consumers) through means not available to developed countries:<sup>8</sup> For example, direct and indirect investment and input subsidies to poor farmers are excluded from the calculation of aggregate measures of support (AMS); reduction in support commitments by developing countries can take ten years to be implemented while least developed countries (LDCs) are totally exempt; food subsidies to urban and rural poor are excluded from the calculation of support, etc. Moreover, there is considerable difference between the applied and bound tariff rates in agriculture for these countries. Simple (unweighted), applied tariffs in agriculture averaged 25% compared to 66% for bound rates for 31 developing countries (excluding Cairns group members), which suggests that there is considerable scope for increases in their protection of agriculture, should they wish to do so (Michalopoulos 1999 b)<sup>9</sup>.

It can be argued however, that the exception of the investment and input subsidies provided to poor rural households from the calculation of the AMS is subject to the "peace clause"—Article 13 of the

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<sup>6</sup> There is also a third group with small non diversified agricultural sectors, either because of climatic conditions or land constraints ( e.g. small island economies), which are not likely to be significant participants in these discussions

<sup>7</sup> Some also point to the "unfairness" of the agriculture agreement as it still permits greater support levels for developed countries —which had in the past given a great deal of assistance to their agricultural sector—as opposed to the developing countries which penalized agriculture in the base period (Das, 1998).

<sup>8</sup> It should be recalled however, as part of the URA and previous negotiations, there were significant reductions in tariffs on horticultural and floricultural products of interest to developing countries.

Agreement on Agriculture and thereby limited to the 1992 levels of support ( Kwa and Bello 1998). This may indeed result in unreasonable restraints for low income developing countries which may wish over time to increase their support for the rural poor. To eliminate this ambiguity, such subsidies could be included in the "Green Box" of measures which are permitted under all circumstances.<sup>10</sup> But, on the whole, and with the possible exception noted above, it is difficult to visualise circumstances where the Agreement seriously constrains developing countries efforts to pursue policies that would efficiently promote their agricultural sector.

There is little evidence that the export subsidy reductions of the UR agreement have led to an increase in import expenditures of poor NFIDCs. Even so, it is legitimate to ask what might happen in the future and what is the proper international response to such a potential problem.

The problem relates to the possible adverse short term effects of eliminating trade distorting measures on poor NFIDC, which are likely to be outweighed by the longer term world wide efficiency gains. Actually the short term effects are also likely to spread out over time—as the distortions are bound to be phased out rather than eliminated at once. And it would be very difficult to isolate the impact of the resulting price increases from other factors, including the developing countries own policies. It is for this reason that IMF did not provide automatic financing from its Compensatory Finance Facility for Cereals but drawings from the CFF were included in the overall IMF program to individual countries.

The recently negotiated Food Aid Convention (International Grains Council, 1999) stipulates that, when allocating food aid, priority should be given to LDCs and low income countries. Other NFIDCs can also be provided with food aid "when experiencing food emergencies or international recognized financial crises leading to food shortage emergencies or when food aid operations are targeted on vulnerable groups" But there is nothing-- and there should be nothing—automatic about the assistance provided. Indeed, if a need can be shown to exist, the international response should not be limited to food aid but extend to all kinds of general purpose financing on appropriate terms. The latter would be better than food aid, which is frequently tied to procurement from a particular donor and determined by food stock availability in the donor rather than the needs of the recipient.

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<sup>9</sup> Although there may be some problems for LDCs regarding the limits on AMS after the expiry of the transition periods (UNCTAD, 1998).

<sup>10</sup> An alternative would be to exempt from challenges under the subsidies agreement

In sum, the large number of developing countries for which the agriculture sector is an important source of income and employment, especially for the poor, would benefit from a further liberalization of the sector—subject to some conditions discussed below, and should join the Cairns group members in their efforts to (a) seek a very substantial reduction in export subsidies; these subsidies, which are primarily extended by developed countries, tend to undermine developing countries' efforts to stimulate increases in their own agricultural output; (b) seek to improve market access for their potential agricultural exports by negotiating for significant reductions in tariffs and opening up of tariff quotas.

At the same time they need to safeguard those aspects of the Agreement (as well as add new ones, if appropriate) which permit them to extend assistance of various types to poor farmers as well as maintain programs of assistance and food security to the poor. But these measures should not introduce distortions between selling to domestic market and abroad; or as between sectors. Finally, the matter of increasing costs to net food importing countries is better addressed in the context of the overall availability of concessionary finance to these countries, rather in the context of food aid.

It is unclear at this juncture what form the negotiations of improving market access in agriculture will take, e.g. whether formula cuts for tariffs would be agreed upon or not. The variance of tariffs in agriculture tends to be higher than for manufactures in both developed and developing countries. In such circumstances, formulas which result in proportionally greater reductions in peak tariffs are more likely to result in trade increases. For the developing countries, given the amount of escalation present in many developed countries tariffs, it may well be advantageous to push for formulas that would lead to greater reduction in processed food products.

The extent of reciprocity in tariff cuts and other aspects of liberalization, is discussed more systematically in section V below. Suffice it to say at this point, that in seeking to open up other markets, developing countries need to consider not only how much they have to "pay", in the traditional WTO/GATT sense, but also how further opening of their own markets will result in improvements in their long term efficiency and incomes.

## **B. Services**

In the aftermath of the great confrontations between developed and developing countries over the inclusion of services in the UR, the implementation of the agreement has resulted in comparatively little controversy. This is in part because the service agreement involves on the whole voluntary commitments of liberalization through a combination of positive and negative lists which have excluded modes of supply or sectors in which countries have wished to avoid foreign competition. In part it also reflects that a significant number of developing countries have recognized the adverse effects that protection of inefficient service sectors can have on the rest of the economy, e.g. through the high cost of service inputs on the competitiveness of the export sector. And it is precisely for this reason that many participated actively in the successful conclusion of two additional sectoral negotiations since the end of UR, those on financial services and on telecommunications.

Nonetheless, it is clear that developing countries have made far fewer commitments for service liberalization than developed countries and on the whole will find themselves under pressure to make more. Also, in some cases, countries have liberalized certain aspects of their service provisions but have not "bound" these commitments in the WTO; which raises an issue analogous to the question of how to give "credit" to such liberalization in the context of negotiations which had also been raised in the UR with respect to goods. Finally, one of the problems inhibiting some countries from liberalizing further is the absence of a suitable safeguard clause in the GATS. While Article X of GATS requires negotiations whose result should enter into effect no later than three years after the entry into force of the WTO agreement, i.e. by 1998, this has not happened.

What is the appropriate strategy for developing countries in this setting? There are no obvious developing country groupings as is the case with agriculture. Rather, there is a large range from the LDCs, with scarcely any modern domestic service providers, to middle income countries with some very advanced service sectors concerned with market access in developed countries, and many countries in-between. There are also some countries which have comparative advantage in certain kinds of services, e.g. construction and are concerned about market access issues in developed countries for these sectors. There is however, one mode of supply and two sectors that hold special interest for developing countries: Movement of natural persons and construction and maritime services.

Movement of Natural Persons. While some progress has been made regarding the movement of qualified professionals to work abroad, developed country restrictions inhibit increased service earnings for developing countries through this mode of supply. The commitments on trade in services have tended to emphasize measures regulating commercial presence—which is important for foreign direct investment, rather than "mode four" involving movement of natural persons.

The commitments made regarding the movement of natural persons have primarily involved intra-corporate transferees and business visitors and, to a lesser extent, independent professionals, including those providing services within a service contract. One of the limitations imposed by a large number of countries is an economic needs test (ENT). This typically involves judgements by government agencies based on non-transparent criteria, as to market conditions, availability of local service providers etc, regarding which foreign service providers to permit and which not. Indeed of the 54 countries which have made commitments subject to a needs test, only three have stated criteria for the ENT. Frequently, the result is to nullify access commitments involving mode four supply of services. Developing countries may wish to press both for liberalization of mode four supplies in more professional categories and through limiting the use of ENT in specific sectors and making the ENT criteria transparent and consistent. Progress is desirable in this area, although it should be recognized that developing countries also have restrictions in this mode of supply that should be lifted as part of the negotiations.

Construction Services. In addition to overall liberalization in mode four commitments, specific sector based liberalization involving the movement of natural persons may be important in the area of construction services. Several developing countries, especially in Asia, have the capacity of exporting such services, or other services based on their comparative advantage in labour intensive activities which are constrained by developed country restrictions on "movement of natural persons".

Maritime Services. Efforts to reach agreement in this sector failed in 1995-1996 and the negotiations were suspended with a view to resuming them in the wider context of the negotiations starting in 2000. This should be a major area of interest for developing countries in the service negotiations: "The oceans are populated by cartels...known as shipping conferences" (Francois and Wooton 1999, p.4). These cartels set prices and pursue other collusive activities in 85% or more of maritime services they control and they are often exempted from antitrust law in developed countries.

Their impact in raising transport costs to poorer developing countries, especially to low volume, high distance destinations—in Africa and poorer island economies can be even more important than further tariff liberalization: shipping margins on merchandise trade in Sub-Saharan Africa exceed six percent compared with OECD tariffs (after preferences are taken into account) of less than two percent (Francois and Wooton, 1999). Liberalization in this sector, which would lead to increased competition and reduced margins may be of great importance to many of the small economies members of the WTO. Also, liberalization could lead to increases in the provision of maritime shipping services by some developing countries themselves.

In addition to these specific areas of interest, developing countries need to press for the establishment of a suitable transparent and non-discriminatory safeguard mechanism. While further liberalization of their service sector would in many cases be in their own interest, the political economy of trade reform requires that a suitable safeguard mechanism is put in place for trade in services just as it is for trade in goods.

In sum, the service negotiations offer opportunities for developing countries to open up further their own service sectors, which many may wish to do in any case, in order to reap the benefits of increased efficiency. In exchange they should seek liberalization in certain sectors and modes of supply of interest to them; but condition any offer for further liberalization on agreement that a suitable safeguard mechanism on services is agreed upon.

### **C. Rules of Origin**

Unlike the other two subjects discussed above, negotiations on establishing harmonized rules of origin are actually already under way—and have been for some time. There will be an effort to reach agreement before a new set of negotiations start. If this does not succeed, the topic may end up becoming part of future negotiations. The key interest of the developing countries, is to avoid setting up rules which can be used as substitutes for, or reinforcements of, quantitative restrictions being phased out under the Agreement on Textiles and Clothing. (Croome, 1998).



#### **IV. Potential Subjects for New Negotiations**

Beyond these two major agreed areas for negotiations, and the ongoing ones on rules of origin, there is a variety of other subjects which have been suggested for inclusion in a possible new round of multilateral negotiations. For some, for example, environment, competition and investment, preparatory work is under way based on previous WTO Ministerial decisions, or, as is the case of government procurement, under GATS. For others, e.g. trade facilitation and electronic commerce, work has been started only more recently; but there has been no agreement that they should be included in a new round. Some subjects involve general reviews mandated under the provisions of the existing WTO agreements which are expected to occur starting in 2000 and which could be folded in a new round, e.g. TRIPS, TRIPS. Finally, there are subjects, such as industrial tariff and labour standards, that have not been generally agreed for any kind of consideration, but which various WTO members have suggested for inclusion.

This is a vast array of subjects from which to choose. In some cases, e.g. TRIPs, developing countries need to develop a position for the review that starts in 2000, and the issue is whether to include this in a wider array of negotiations or not. But in practically all others developing countries have a choice of whether to support multilateral negotiations on the subject or not, and whether to do so in separate negotiations or combine the negotiations in a single undertaking.

The criteria countries use in reaching a decision should include: (a) the net benefits they would expect to obtain for their economies both through their own liberalization and through improved access in the markets of others; (b) the net benefits that would result from setting new rules and/or changing existing ones; (c) the institutional capacity needed to implement whatever new agreements are reached. The last criterion is very important because of the problems many developing countries have encountered in implementing existing UR agreements.

Based on these criteria different developing countries may well reach different conclusions on which of these topics to include in new negotiations, if any. An attempt is made in the discussion that follows to reach some broad conclusions about the general desirability of negotiations in each of the above areas from the standpoint of developing countries as a whole, recognizing that such generalisations need to be carefully scrutinized in the case of individual countries or groups of countries.

## A. A Potential Developing Country Agenda

Industrial Tariffs<sup>11</sup>. Both developed and developing countries have called for new negotiations in the context of the preparatory process for the next WTO ministerial meeting (see above). The average trade weighted MFN applied tariffs facing developing countries exports of manufactures in OECD markets, though small in absolute terms (3.4%), tend to be almost four times as high as those faced by other OECD countries. Industrial products make up more than 70% of exports of developing countries and are of importance to practically everywhere except Sub-Sahara Africa ( Hertel and Martin,1999). Such negotiations also offer an opportunity to address the continuing problem of tariff peaks that are still present in developed country markets for products of interest to developing country exporters.

In order to obtain such reductions however, it is clear that developing countries would need provide increased opportunities for access to their own markets for such products. Their applied industrial tariffs are typically higher than in industrial countries and with a greater degree of dispersion-- i.e. there are tariff peaks in developing countries also. Moreover, increasingly, developing countries exports of manufactures are directed to other developing countries rather than developed country markets. But, except for Latin America, a large number of developing countries have not bound significant portions of their industrial tariffs. Even those that have, often use "ceiling bindings" , with bound rates much higher than applied rates.

To achieve reductions in tariff peaks a formula approach could be used that results in greater proportional reductions of high bound tariff rates in both developed and developing countries (Laird, 1999). Other approaches may also be feasible, but in such cases, developing countries may be at a disadvantage because few of their markets are individually large enough to be of "interest" to developed countries participating in the negotiations.

While such a negotiation is in principle of considerable interest the difficulties in reducing tariff peaks should also be recognized. Tariff peaks in developed countries—defined here as products on which tariffs are at least 12% or roughly three times their average MFN tariff on manufactures—are present in the following products and product groups: (a) major agricultural staple food products such as meat, sugar, milk and cereals; (b) cotton and tobacco; (c) fruits and vegetables; (d) processed food products—

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<sup>11</sup> The term "industrial" is a slight misnomer: It basically includes all tariff lines other than those classified as "agriculture". The latter was defined in the UR to include HS Categories 1-24 and a few additional lines from a number of other HS categories ( WTO, 1995).

canned meat, fruit juices etc.; (e) textiles and clothing; (f) footwear and leather products; (g) selected automotive and transport equipment products (UNCTAD/WTO, 1997). Product groups (a-d) above are agricultural commodities, which would be the subject of the agriculture negotiations. It will be difficult to get developed countries, especially the US,<sup>12</sup> to negotiate their tariff rates on textiles and clothing, which under the Agreement on Textiles and Clothing (ATC) would be the only mechanism of protection of this sector (for WTO members) after 2005. But clearly an effort should be made. After all the developed countries will be asking developing countries to make commitments in a number of "sensitive sectors" as well. Finally, leather and footwear and transport equipment are important in a number of developing countries, but obviously to a narrower group than those affected also by tariff peaks in agriculture and textiles.

Despite the difficulties, a potentially mutually beneficial negotiation could occur in which developing countries, reduce ceiling bindings—and perhaps some applied rates as well, in exchange for further reductions in industrial tariffs of developed countries—which however, included significant reductions in "peak" tariff rates. Such a negotiation could yield benefits to the developing countries in a variety of ways. They would benefit both from their own liberalization—which typically accounts for the bulk of the estimated welfare gains—as well as improve stability in their own trade regimes through binding more products and doing so closer to applied rates. And they would benefit from increased market access in other developing and developed country markets.

TRIPS. Perhaps no other agreement of the UR has generated more concerns in the developing world than TRIPS. A review of TRIPS is mandated for 2000, and of some aspects of it even earlier. The review offers an opportunity for the developing countries to address a number of issues of concern to them. While formally speaking the review does not involve a "negotiation", the developing countries have an interest in making it part of a new round of negotiations. This is an area where some changes in the existing rules would tend to be beneficial to development, but may be resisted by entrenched interests in developed countries. The only way for developing countries to introduce the rules changes they want, may be by making this topic part of a larger package.

There are several sets of problems that the agreement poses. At a general level there is a concern that the efficiency losses—resulting, for example from significantly increased prices from

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<sup>12</sup> EU Commissioner Brittan announced in March, 1999 that the EU would not exclude textiles and clothing from tariff negotiations.

pharmaceuticals would exceed any dynamic gains resulting from increased research and development or larger flows of foreign direct investment. (Correa, 1998, Deardorf , 1992); or that the length of time provided for patent protection is excessive. There is also a general concern that the agreement does not provide for a reasonable balance between the rights of producers and users of knowledge and technology; and that it is based on an outdated concept of "knowledge" which does not take into account the externalities of knowledge dissemination. But there is little agreement on how these broad issues can be addressed.

The patent system itself poses a variety of problems for a number of the poorer developing countries with an agricultural based economy: First, the patent system is unlikely to work as an incentive to local innovations, except in countries with a significant private scientific and technological infrastructure. At the same time the Agreement, by not recognizing community proprietary rights to traditional knowledge, has led commercial firms in developed countries seeking to obtain proprietary rights to traditional medicines or product varieties ("basmati" rice and the bark of the *neem* tree are the most known examples). The Agreement may also result in constraints on farmers use of their own seeds saved from harvest for replanting; and it has tended to encourage patents in processes involving biotechnology aimed at providing substitutes for existing developing country exports. Last, but not least, developing countries have experienced difficulties in implementing the procedural and legal commitments required by the agreement. (UNCTAD, 1998, WTO, 1997-1998).

Changing a number of these provisions to make the agreement more "development" friendly, will not be easy because of the strength of the commercial interests in developed countries which it protects; but it is certainly worth the effort for developing countries to make change in the most detrimental aspects of the agreement a fundamental condition of trade negotiations.

## **B. Good Ideas, but Can they Be Implemented?**

This group of topics contains three issues, government procurement, electronic commerce and trade facilitation in which new agreements may result in welfare improvements for developing countries but which have institutional requirements that may be a serious burden for many WTO members to shoulder.

Government Procurement. Few developing countries have joined the plurilateral agreement already in place. Some (Chile, Hong Kong) have noted that while they agree with the objectives of the agreement, they find its implementation provisions to be quite cumbersome partly because the agreement is based on the principle of bilateral reciprocity. On the other hand, participation in the agreement has become almost mandatory for newly acceding members with the US insisting on all acceding countries making a commitment in this regard (Michalopoulos, 1998).

There is little doubt that developing countries can benefit significantly from liberalizing government procurement procedures—not so much because of their capacity to gain international contracts, but in terms of improved resource utilization through more transparent and competitive government procurement practices. As most government purchases relate to services rather than merchandise trade, the issues have to do essentially with liberalization and national treatment of foreign service providers. Indeed, a recent paper (Evennett and Hoekman, 1999) suggests that it is important to eliminate preferences in government procurement before improved competitive practices are put in place. This is because, if the opposite sequence is followed, under certain circumstances, preferences on government procurement could lead to increased resource misallocation.

The issues have to do with implementation: Is this an important enough area for developing country WTO members to adopt new multilateral rules? What should these rules be—i.e. is it desirable to keep the government procurement agreement as it is, or should it become a truly multilateral arrangement? Can developing countries be assured that the technical assistance that they may need to implement the new provisions and probably the new legislation required would be forthcoming?

Trade Facilitation. This topic has generated considerable interest in the private sector in recent periods and is being considered as one of the areas in which new "rules making" efforts may be desirable. As formal trade barriers have gone down, procedural requirements of various kinds impede the flow of goods and services. Innumerable and non-standardized documentation requirements exist for exports and imports. On average about 60 documents are used in an international trade transaction—and they often differ from country to country. These are compounded by antiquated official clearance procedures. Lack of transparency and predictability is a major source of uncertainty in terms of the costs and time for delivery of commercial transactions. The problems are typically much greater in developing countries where automated procedures in customs administration do not exist.

The WTO work so far has identified the following areas in which proposals have been made for improvements and revisions aimed at simplifying and standardizing procedures: (a) government mandated information requirements, (b) procedures for customs clearance; (c) transparency and review; (d) transport and transit. There are at least eight international conventions and agreements guiding these areas of which the most important is the 1973 International Convention for the Simplification and Customization of Customs Procedures, (the "Kyoto Convention of 1973), in which no more than half of WTO members participate.

There is little doubt that developing countries trade would benefit significantly from such trade facilitation measures. There is also little doubt that few have the technical capacity to adhere meaningfully to multilateral rules regarding such procedures without significantly strengthening of their institutions. While technical assistance would obviously be needed, such assistance may not be sufficient to modernize their institutions in a reasonable period of time. As a consequence, meaningful progress in this area may best be made through first establishing an agreement which countries would have an option of joining at a suitable time in the future rather than a multilateral agreement which would be part of a single undertaking with rules which developing countries may have serious difficulties in implementing.

Electronic Commerce. Electronic commerce accounts for a small but rapidly growing proportion of world trade in goods and services. This growth has occurred in a legal vacuum with few accepted rules and disciplines. Moreover, the cross-border nature of the transactions has made the issue of legal jurisdiction unclear. There is little doubt that over time, a framework of global rules for transactions through the Internet will have to be established. The key issue is whether there is enough understanding of the issues and enough international consensus to attempt to reach an agreement as part of a new round of WTO negotiations.

The topic was first raised WTO in the context of the Geneva Ministerial meeting of 1998. At that time, a standstill was agreed involving a commitment that WTO members, "continue their current practice of not imposing customs duties on electronic transmissions" and to produce a report that may contain recommendations for action (WTO, 1998b). The original US proposal intended to reach a multilateral agreement that would permanently exempt electronic transmissions from customs duties. Many developing countries were put off by the proposal at the time as it was felt that it had not been sufficiently explored and discussed. Some observers thought that the proposal was being rushed as a "price" to get

US President Clinton to participate in the Ministerial. In subsequent discussions, developing countries raised a variety of concerns: Some thought that such a commitment will result in countries foregoing future opportunities to collect customs revenue; others were concerned as to whether the electronic mode of service supply should be given preferential status relative to other modes which were being regulated. Most were unwilling to commit because they felt that they did not have enough understanding of the issues, and because of uncertainties about the policies implications of future technological change.

Developing country concerns about foregone tariff revenues are clearly an exaggeration—after all, most countries provide large scale exemptions to their existing tariff schedules. Further WTO discussions, while reaching consensus on a few points, also identified a large number of issues: A consensus is emerging that first, the electronic delivery of services falls within the scope of the GATS and all GATS provisions are applicable to it; and second that the "technological neutrality" of GATS means that electronic supply of services is permitted unless specifically excluded. There are many uncertainties, however: (a) how to classify internet access and services, including new ones; (b) whether certain products electronically transmitted should be classified as goods; (c) what are the proper links to the Telecommunications Agreement; (d) how to ensure privacy of transactions and how to value encrypted data; (e) what are the links to TRIPS e.g. copyright protection for electronic and database material. And finally, there are many standards related issues involving interconnection and interoperability of systems which need to be addressed to ensure that standards setting by governments does not impede electronic commerce (WTO, 1999 b).

The major concern that most developing countries should have in the area of electronic commerce is simply that they do not have the technical capacity to negotiate meaningfully a multilateral agreement at this time. To do so in most cases may result in assuming commitments which they have neither the capacity to understand or implement. Thus, it may well be that at present, developing countries agree simply to continue the standstill on protection, and defer multilateral negotiations on this issue to a later time. Of course, if a significant number of WTO members feel the need for an agreement, such an agreement could be put in place but should not be part of a single undertaking requiring developing country participation.

### C. Some Difficult Issues

Environment. Issues involving the various links between trade and the environment have been discussed extensively in the WTO for the last five years.<sup>13</sup> The issues are thorny and complex, driven by two concerns: on the part of the developed countries, a desire to be responsive to strong pressures exerted by domestic environmental groups to preserve global biodiversity and prevent environmental damage through all possible measures—including trade restrictions; and on the part of developing countries, concerns that developed countries violate WTO rules when they act to restrict access to their market on environmental grounds, sometimes unilaterally determined, and especially when the alleged environmental damage occurs beyond the developed countries' own borders and extends to processes and production methods (PPMs) of the traded merchandise

There are several sets of interrelated issues that have formed the basis of the debate so far, and the positions on these issues vary both among developed and developing countries. Only an outline of the issues is attempted here, rather than a discussion of the positions taken by different countries.

(a) The relationship between trade provisions of Multilateral Environmental Agreements (MEA) and the WTO. This includes questions such as, which MEAs to include; what to do in case the measures are incompatible with the WTO; what to do regarding countries which not members of a particular MEA; and which dispute settlement mechanisms to use.

(b) Whether and how to take into account PPMs as they relate to the environment in the framing of trade rules; and in this connection what weight to put on multilateral agreements (for example on ozone depleting substances) or unilateral judgements, such as those used by the US in the tuna- dolphin case or the precautionary principle used by the EC. In the same context, what to do about eco-labelling schemes, which could adversely affect imports from specific developing countries, and how to bring them in conformity with broader WTO rules on standards.

(c) The general relationship between trade, environment and development. This has many facets, including the formal recognition that poverty is a major cause of environmental degradation; provision of assistance to developing countries to promote sustainable development; issues related to the impact of

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<sup>13</sup> There is an enormous literature on the subject. A useful summary of the main issues in the debate from a developing country perspective is presented in Shahin, 1997, See also OECD, 1999.



new environmentally motivated standards imposed by developed countries on the competitiveness of developing countries exports; and the broad relationship of different trade liberalization measures and the environment (see Bhagwati and Srinivasan, 1996).

Developing countries face the following basic dilemma: should they negotiate an agreement covering the various complex trade and environment issues, which would involve legitimizing through explicit detailed understandings different market access restraints on environmental grounds, but would limit the more blatant unilateral developed country abuses; or should they leave the system as it is, when developed countries can use the broad language of GATT Article XXb to restrain trade on environmental grounds (recently interpreted very broadly by the Appellate Body in the shrimp- turtle case), and rely on the WTO Dispute Settlement Mechanism (DSM) to curb developed country abuses? Various developing countries would respond to this dilemma differently. But on balance, it may well be that, given the strong pressure that both the EU and the US would bring to bear on including this issue and the difficulties developing countries have faced in using the DSM, they may wish to agree to including environment in the agenda—as part of an overall understanding on a set of negotiations that meet their other objectives, e.g. regarding restricting developed countries' subsidies in energy, fisheries or agriculture which may have adverse effects on the environment; and/or the provision of assistance to developing countries to help them address poverty issues that contribute to environmental degradation.

Competition The issue was originally placed on the WTO agenda by the US as a means of promoting greater market access, especially in the Japanese market —where it felt, that poorly enforced competition laws disadvantaged US exporters. Following the WTO Ministerial in Singapore a working group was established to analyse the issues involved. Competition policy is currently being advocated as an issue for negotiations by EC, but the US has cooled off in its advocacy for a WTO agreement.

There is no agreement on how to proceed in the WTO. The alternative approaches being considered include: (a) the establishment of minimum anti-trust standards that would prohibit certain practices while applying notification requirements on others, but which would be administered by national authorities (EU); (b) linking competition policy to limitations in the use of other WTO practices, e.g. anti-dumping (Japan, other Asian countries); (c) extending the coverage of WTO rules under Article XXIII of the GATT which allows WTO members to challenge practices which, while not illegal under WTO rules, result in nullification of benefits negotiated in trade agreements.<sup>14</sup>

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<sup>14</sup> For a useful review see WTO, 1997a, Vol. 1, Chapter 4.

For small developing economies, an open trade regime and liberal policies toward foreign investment may be sufficient to cope with most problems arising from domestically generated restrictive business practices. For those that have enacted competition laws, implementation capacity is often limited. The highest priority for many is to establish and implement proper national competition policies which need to focus on facilitating new entry, eliminating administrative obstacles to the establishment of new firms (including foreign ones) reducing transport costs which create local monopolies etc, – rather than establishing and implementing an anti-trust machinery. Moreover, for small developing countries the key issues regarding restrictive business practices may primarily involve of transnational corporations (Hoekman and Holmes, 1999; Low and Subramanian, 1996). These corporations have the potential to dominate small economies or reduce the benefits that accrue to host countries e.g. through transfer pricing and related actions that stem from the large proportion of international trade which involves intra-firm transactions. Unless such activities are brought under the competition rules proposed, which has not been the case so far, there is little reason to focus on multilateral rule making for developing countries in this area.

Neither the US nor the EU is interested in introducing competition mechanisms to deal with issues covered by anti-dumping. And the recent upsurge of anti-dumping actions by many developing countries suggests that many of them are also of the same view. Finally, there appears little to be gained by developing countries in improved market access in most developed country markets by the establishment of multilateral rules covering anti-trust. Most of these markets already have reasonably functioning anti-trust systems which could be used by developing countries.

For all these reasons, developing countries should resist the inclusion of competition policy in a new Round. There is little that a multilateral agreement focusing on anti-trust, as the EU is suggesting, would do to help them. And should an agreement be reached, its implementation would require the building of institutional capacity in an area which is not of high priority for most developing countries.

Foreign Investment. Foreign investment is of great importance to developing countries. But the key questions are, not its importance to development but whether a balanced agreement, which reflects both the interests of developing countries and those of transnational corporations (TNCs) and foreign investors, can be reached on the issue, and whether the WTO is the right institution in which to pursue it. The recent history of international negotiations suggests a negative answer to both questions.

The issue was raised in the Uruguay Round, only to be limited to the trade-related aspects of investment measures (TRIMs), because of developing country opposition. A WTO working group on investment was established following the Singapore Ministerial. In parallel, there was an effort to conclude an agreement within the OECD, the so called Multilateral Agreement on Investment (MAI). When that failed, the EU proposed that the issue be pursued in the WTO, while the US, has maintained that, at present, there is no need to pursue an agreement in the WTO. It should also be recalled, that in the 1970's, and much before the MAI, there were several efforts initiated by UNCTAD and backed by many developing countries to reach an international understanding on restrictive business practices of TNCs—which also failed, because of opposition by the developed countries

The effort to pursue an agreement within the OECD—which excluded most developing countries, was ill-advised. In addition, developing countries and many NGOs have argued that the draft MAI did not contain a proper balance between the rights and responsibilities of TNCs, nor between the rights and responsibilities of the TNCs on the one hand and those of the governments receiving foreign investment, on the other.

In the last two decades, there has been a great deal of analysis focusing on the enormous potential that foreign private investment carries for development, but also of the potential problems and pitfalls of a totally unregulated foreign private investment regime for developing countries with weak supervisory institutions. Over the same period, developing countries liberalized capital markets and regulations governing foreign private investment—both direct and portfolio-- which led to spectacular increases in the volume of private capital flows to developing countries—all this without a multilateral agreement. Private capital flows have been concentrated, and many for example, in Sub-Saharan Africa, have not been able to attract foreign private investment. It is doubtful however, that such countries could not increase their future inflow of foreign investment without a multilateral agreement.

Given the previous history of international negotiations on this topic, there should be little optimism that a formal agreement which balances the interests of foreign private investors and developing countries is achievable. Notwithstanding a generally more favorable attitude towards foreign private investment in developing countries, recent private capital volatility has, if anything, made such an agreement even more difficult. And it is not clear, that such an agreement, while potentially helpful, is actually necessary for developing countries wishing to attract foreign private investment.

Various aspects of foreign investment are already addressed in the GATS, which offers the opportunity for voluntary commitments. As Hoekman and Saggi (1999) argue, there is potential for developing countries to increase their commitments in this area; and a more general agreement is neither needed nor feasible. Developing countries perceive that the only interest developed countries have in going beyond voluntary commitments is that the WTO would permit trade retaliation for violations of any agreement on investment. Indeed, at present, the WTO has enough issues on its plate; the last thing it needs is the additional burden of the multitude of disputes bound to arise within any agreement that sets general rules on foreign private investment.

Labour Standards. Despite being repeatedly rebuffed, most recently at the Singapore Ministerial, the US continues to bring up labour standards as a topic for possible WTO negotiations. In this it has enjoyed the support of a few developed countries. But, the international community as whole, has always been of the view that the issue belongs and should be addressed in the International Labor Organization. The proposal is intended to placate protectionist attitudes primarily of US labour unions. It is also being supported by a number of well meaning NGOs, whose legitimate concerns, in this area, e.g. regarding child labour, indirectly provide "cover" and support to protectionists. It can lead to no plausible benefits to developing countries' trade (Maskus, 1997). Therefore it should be strongly resisted as a topic for inclusion in the new round of negotiations.

Anti-dumping. The governments of many developing countries (but others as well, for example Japan) have complained about the increasing use of anti-dumping measures by developed countries to limit market access in products of interest to developing countries; they have also expressed concerns that developed countries have done little to provide developing countries with favorable treatment in the implementation of the agreement. At the same time, developing countries themselves have been using anti-dumping measures with increasing frequency. Many academic economists, noting this trend and the potential that anti-dumping measures have for abuse and non-transparency, have called for tightening the existing WTO disciplines in this area and for the inclusion of this topic in a new Round of negotiations.

Undoubtedly such tightening holds promise for improving market access conditions in both developed and developing countries. The political climate for including this topic in a new Round of negotiations however, may not be propitious: many developing countries may find it difficult to agree to the tightening of the rules in the use of an instrument—which the developed countries have been using

liberally for many years—just at the time that developing countries have developed the capacity to use the instrument themselves.

## **V. Strategic Options**

### **A. Scope and Linkages**

The above analysis of the topics for inclusion in future WTO negotiations of interest to developing countries has reached two broad conclusions: First, that in addition to the already agreed negotiations on Agriculture and Services, there are two other topics, TRIPS and industrial tariffs which are definitely of interest to developing countries; and two others, trade and environment and government procurement which potentially and under certain circumstances may be advantageous for various developing countries to include as part of future negotiations. Second, that there are several other topics on which multilateral negotiations may be either premature (trade facilitation, electronic commerce) or counterproductive (labour standards, competition, foreign investment,) for most developing countries. Given these conclusions, the question arises as to whether it is in the interest of developing countries for these topics to be negotiated individually or as part of an overall Millennium Round of WTO negotiations.

There are very strong political economy arguments in favor of an overall Round involving a single undertaking, but a relatively small number of topics—four to six as outlined above, so that it does not severely tax the negotiating or institutional capacity of countries and can be concluded over a reasonable time-frame. The basic reason why a single undertaking is needed is to permit trade-offs across topics. Developing countries have important interests in having developed countries liberalize agriculture, reduce tariff peaks in industrial products, modify TRIPS, as well as liberalise some specific service sectors and modes of supply. On the other hand developed countries would be looking for additional developing country commitments in the form of more bindings and reductions in the bound and applied rates of industrial products, as well as some additional commitments in service sectors. The only way that developing countries can overcome the opposition of entrenched protectionism in developed countries—for example in agriculture or maritime services, or textiles, is to take advantage of the pressure that export interests in the developed countries will bring to bear on their own governments to negotiate in order to open up developing country markets. Countervailing pressure from export interests of developed countries on their governments is critical to opening up developed country markets in areas of interest to developing countries (Krueger, 1999).

This pressure and linkages may exist within a particular topic—e.g. industrial tariffs, but are maximized if there are opportunities for linkages across a wider set of negotiations. Conversely, topic by topic or sector by sector negotiations, tend to focus primarily on areas of interest to developed country exporters: once their demands for increased access in a particular sector—e.g. information technology are satisfied, they no longer have to provide domestic support to multilateral negotiations to their own government—which then have to deal only with the ever-present protectionist lobbies that oppose improving market access.

The danger for developing countries of a large set of negotiations is that they will tax their institutional capacity to negotiate and implement new agreements. This is why developing countries should attempt to keep the negotiation package to the minimum necessary of no more than four to six topics. To use the old bicycle analogy once more: the momentum of a Millennium Round is needed to push the bicycle forward, but we should not load the bicycle with so much baggage that it collapses from the excessive weight.

The other question developing countries have to address is the linkage between problems they have in the implementation of the UR agreements and the launching of a new Round. Some developing countries have stated that a new Round should not be launched unless and until the URA are "fully implemented". This is obviously a good tactical position, especially to fend off developed country demands for inclusion in a new Round of topics not in the interest of developing countries. But it is clear that in certain areas, for example in the implementation of the ATC, the legitimate developing country concerns are with the manner in which the agreement has been implemented by some developed countries, not with specific violations of the agreement itself. Similarly, a number of the developed country commitments to provide special and differential treatment for developing countries have been made in such general terms (for example the provisions under Article 15 of the understanding on Article VI)<sup>15</sup> that it is unclear what specific actions need to be taken or guarantees given before a new Round is launched. There are two areas however, in which it may be worthwhile for developing countries to seek to obtain specific guarantees or commitments before the launching of a new Round. These are the transition periods that have been provided to developing countries to implement the URA and the technical assistance that has been offered to developing countries to help them implement their commitments under

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<sup>15</sup> See Michalopoulos, 1999b

the UR. The way to do this is as part of an overall understanding of what is to be included in the Round and the nature of special and differential treatment to be provided.

### **B. The Basis for Negotiations: The Role of Special and Differential Treatment**

Over the years, a variety of provisions have been introduced into the GATT and then in the WTO agreements to provide S&D treatment (WTO, 1999a). These fall into the following two broad categories: (a) positive actions by developed country members or international institutions; (b) exceptions to the overall rules contained in the agreements that apply to developing countries and, sometimes, additional exceptions for the least developed countries. One of the important strategic questions developing countries would need to address in a new Round of negotiations would be the scope and nature of special and differential treatment they would seek to obtain in any new agreements.

There are three kinds of positive actions that developed countries have agreed to take to support developing countries participation in international trade: (a) extend preferential access to their markets, primarily through the voluntarily provided Generalized System of Preferences (GSP) and through further preferences for LDCs; (b) provide technical and other assistance –as noted above; (c) implement the overall agreements in ways which are beneficial or least damaging to the interests of developing and least developed countries.

There are also two fundamental ways in which developing and least developed countries have accepted differential obligations under the WTO agreements: (a) They enjoy freedom to undertake policies which limit access to their markets or provide support to domestic producers or exporters in ways which are not allowed to other members. The basic mechanism for this is the principle of non-full reciprocity. This principle is recognized in GATT (1994) Article XXXVI and in the "Enabling Clause". Consistent with these provisions, many developing countries have not bound tariffs on their industrial products to the same extent as developed countries or have agreed to bind at substantially higher than applied levels. Similar provisions for non-reciprocity are included in GATS, Article XIX:2. In addition, specific provisions in various WTO agreements give developing countries greater freedom to provide protection to domestic industry and use trade restrictions to address balance-of-payments problems (GATT Article XVIII) or provide support to small farmers (Agreement on Agriculture). (b) Developing countries (as noted above) are also provided with more time in meeting obligations or commitments under the agreements. In some cases, more favourable treatment involves a combination of (a) and (b).

The question that developing countries need to address is which of the above forms of S&D should be emphasized in the various upcoming negotiations.

Non-reciprocity. In the negotiations in agriculture as well as those in services and industrial tariffs, the main question relate to how developing countries deal with the question of non-full reciprocity in the exchange of liberalizing "concessions" and the extent to which they push for different rules or exceptions to disciplines. Indeed, further liberalization of industrial tariffs will actually tend to erode further the preference margins of GSP.<sup>16</sup>

Regarding the implementation of non-full reciprocity a growing body of analytical and empirical work which suggests that the very exercise by the developing countries of their rights under the various provisions that exempt them from various WTO disciplines, has had negative effects on their trade and development prospects (Srinivasan, 1998). First, developing countries by not participating in the exchange of reciprocal reductions in trade barriers have missed the opportunity of gaining reductions in the trade barriers in developed countries on products of specific export interest to them—as evidenced by the fact that tariffs of developed countries on manufactures of special interest to the developing countries are higher than average (Martin and Winters, 1996). This is the fundamental reason why a number of developing countries decided to actively participate in the UR through the exchange of reductions in trade barriers—albeit without engaging in full reciprocity.

The second line of argumentation that has evolved and gained increasing acceptance in the last two decades attacks the very premise on which exceptions from WTO disciplines is based, namely that higher levels of protection are conducive to development. According to this line of thinking, the permissiveness of WTO provisions has enabled developing countries to maintain higher levels of domestic protection. But this protection has introduced distortions in domestic resource allocation, encouraged rent seeking and waste and adversely affected growth in productivity and sustainable development (Srinivasan, 1998, Finger and Winters, 1998). Similarly, that balance of payments problems are best addressed through macroeconomic policy, including exchange rate adjustments which does not have the adverse effects on resource allocation and productivity created by protection. In a similar vein, other analyses suggest that the developing countries that can be expected to benefit the most from the Uruguay Round are those that have

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<sup>16</sup> It could be argued that global trade liberalization inevitably would lead to a reduction of GSP benefits and that this should not be a cause to refrain from liberalization on an MFN basis. For an overview of GSP implementation and its limitations see UNCTAD, 1994.



reduced their barriers the most, partly because of improved market access opportunities through the exchange of reciprocal reduction of barriers and partly because of the positive effects of their own lower protection on their economies (Martin and Winters, 1996).

It is appropriate to discuss in this context also the question of the "credit" that developing countries could or should get as a consequence of their own autonomous liberalization of trade in goods or services. This issue was raised first in a World Bank paper in 1985, (Michalopoulos, 1985), in advance of the UR when it became apparent that a number of developing countries were liberalizing their trade regimes, and the question was how to obtain "credit" for such liberalization in the upcoming Round.<sup>17</sup> The issue was subsequently discussed in the Functioning of the GATT System (FOGS) group. There was no general provision in the UR to deal with this issue, because in the context of the GATT the primary way of taking into account autonomous liberalization of applied tariffs is if it is translated into a legally binding commitments.<sup>18</sup>

Most recently, the WTO considered a draft statement under which WTO Members would "agree that the value of autonomous liberalization will be recognized as contributions to future multilateral trade negotiations... subject to the government concerned agreeing to enter into contractual WTO commitments to guarantee the lasting character of the trade liberalization that is involved". While agreement on the statement has been temporarily been blocked by a few developing countries which are fearful that it would encourage more liberalization commitments and bindings, it is likely that such a statement would be adopted as a principle in a new Round of negotiations. But even if that were to occur, it is unclear how the "value" of autonomous liberalization would be recognized unless it involves future bindings.

The broad conclusion that can be drawn from this analysis is that active participation in the exchange of liberalizing concessions is the only way to maximize the benefits that developing countries can obtain from the up-coming negotiations. The more developing countries try to rely on non-reciprocal concessions, the less the benefits they are likely to derive. This is an important matter for the many countries, especially in Africa, but also in Asia which did not actively participate in the UR and have bound tariffs in only a few industrial products or have high ceiling bindings in many others. They can use the leverage that they have to obtain concessions in other areas of importance to them.

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<sup>17</sup> See also, Krueger and Michalopoulos, 1985; Balassa and Michalopoulos, 1986.

<sup>18</sup> Some developing countries however, apparently included such reductions in their UR offers. It is difficult to gauge how much "credit" they actually received in the context of the overall tariff negotiations.

Rules and Transition Periods. With regard to exceptions from "rules", we noted earlier how the rules on agricultural liberalization were being written with the developed countries protection in mind. There are clearly some market failures in the agricultural sector of developing countries requiring attention and appropriate exceptions—which are addressed in the Agreement—and which should be retained. Similarly, institutional constraints in many developing countries need to be carefully reviewed and suitable time extensions provided to them regarding the implementation of any commitments in such potential areas of negotiation as TRIPS, government procurement or the environment. But these should not be interpreted as a justification for wholesale extensions of time limits in other areas, for example in subsidies where the issue is not the lack of institutional capacity but unwillingness to reform.

Technical Assistance and other Developed Country Commitments Concerns about the implementation of developed country commitments regarding technical assistance in the context of the UR should carry over to any technical assistance requirements resulting from new agreements. Developing countries should not be prepared to accept commitments they can not implement within the context of existing institutional capacity in exchange for vague offers of technical assistance. Explicit developing country commitments in areas in which they have implementation difficulties should be balanced with explicit developed country commitments to fund the needed technical or other assistance. Similarly, with vaguely worded generalized commitments by developed countries to implement certain agreements or provisions in ways "favorable" to developing countries: It is probably better for developing countries to exchange all of these many vague references for a few concrete developed country commitments.

Least Developed Countries. The special problems and constraints facing the LDCs have received recognition in the WTO through a number of additional special and differential provisions (WTO, 1999a).. In some cases LDCs are exempted completely from disciplines or are provided with more extended transition periods to implement agreements. Moreover, developed countries ( and other developing countries) have made additional preferential market-access commitments for LDCs countries; and an international effort to co-ordinate trade-related technical assistance activities is in the process of being implemented. The question is the nature and scope of special and differential treatment to be extended to LDCs countries in the context of a new Round of negotiations.

There are already some indications that developed countries may be prepared to go further in extending voluntary GSP to these countries, perhaps even offering a commitment to duty free access to all

LDC exports as part of new Round.<sup>19</sup> Such commitments are relatively easy to make in political economy terms, as LDCs account for very small fractions of developed country imports in most product categories. As a consequence LDCs may not have to "offer" any new liberalizing commitments, in order to obtain improved market access.

On the other hand, most analyses suggest, that the main constraints to LDC export expansion derive from weaknesses in institutional capacities as well as supply side factors (UNCTAD, 1998; WTO, 1998c). Thus, the key issues for LDCs in the upcoming negotiations is how to ensure concrete and effective support for trade-related capacity building measures in such areas as agriculture, services or TRIPS. At the same time it is important for LDCs to recognize some of the implications and pitfalls of past developing country experience with the flexibility in the application of WTO rules and disciplines: It could be argued for example, that existing S&D provisions permit LDCs the most freedom of policy choice possible, in areas such as subsidies, that they can least afford. Tighter WTO disciplines in some policy areas may be helpful to LDC governments that wish to introduce and gain domestic consensus for trade policy reform.

## **VI. Conclusions**

Developing countries can derive significant benefits from a WTO Millennium Round of negotiations. While the interests of different groups of countries will differ, there is a number of important issues beyond the agreed topics of agriculture and services, which developing countries as a group may wish to include in a new Round, especially those of industrial tariffs and TRIPS. It may also be advantageous that environment and government procurement be included in such a Round, provided appropriate assurances regarding the provision of institutional support to permit developing countries to meet their commitments can be assured. Other topics should be resisted for inclusion because they are either counterproductive, premature or do not hold promise for net benefits for large groups of developing countries.

The new Round should be a single undertaking in order to maximize the opportunities for trade-offs across issues and for political economy reasons, i.e. to permit liberalizing forces in both developed and developing countries to exert pressure on governments for a liberalized trade environment world-wide. But

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<sup>19</sup> Based on statements by some developed countries in the recent WTO High Level Symposium on Trade and Development.

the Round should not contain too many issues, as it would strain the institutional and implementation capacity of many developing countries.

Developing countries should be prepared to exchange mutually liberalizing trade concessions, because that is the only way to maximize the benefits they obtain from multilateral trade negotiations. Their focus on special and differential treatment should be on the establishment of realistic transition periods and technical assistance to address institutional capacity constraints.

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# Groups of WTO Members, 1999

Member	Least Developed	CAIRNS	OECD	Textile Bureau <sup>1</sup>	Member	Least Developed	CAIRNS	OECD	Textile Bureau <sup>1</sup>
Antigua-Barbuda*					EC				
Angola*	x				Egypt*				x
Argentina*		x		x	El Salvador				x
Australia		x	x		Ecuador*				
Austria			x		Fiji*		x		
Bahrain*					Finland			x	
Bangladesh*	x			x	France			x	
Barbados*					Gabon*				
Belgium			x		Gambia*	x			
Belize*	x				Germany			x	
Benin*					Ghana*				
Bolivia*					Greece			x	
Botswana*					Grenada*				
Brazil*		x		x	Guatemala*				
Brunei*					Guyana*				
Bulgaria**					Guinea*				
Burkina Faso*	x				Guinea-Bissau*	x			
Burundi*	x				Haiti*	x			
Cameroon*					Honduras*				x
Canada		x	x		Hong Kong, China*				x
Central African Republic*					Hungary**			x	
Chad*	x				India*				x
Chile*		x			Indonesia*		x		x
Colombia*		x		x	Ireland			x	
Congo*	x				Iceland			x	
Costa Rica*				x	Israel**				
Côte d'Ivoire*					Italy			x	
Cuba*					Jamaica*				x
Cyprus*					Japan			x	
Czech Republic*			x		Kenya*				
Dem. Rep. of Congo*	x				Kyrgyz Republic*				
Denmark			x		Korea*			x	x
Dominica*					Kuwait*				
Dominican Republic*					Latvia**				
Djibouti*					Lesotho*	x			

\* Developing Economies

\*\* Transition and Other

Note: Turkey left the ITCB in 1996

<sup>1</sup>: International Textile and Clothing Bureau



Member	Least Deve- loped	CAIRNS	OECD	Textile Bureau <sup>1</sup>	Member	Least Deve- loped	CAIRNS	OECD	Textile Bureau <sup>1</sup>
Liechtenstein					Romania**				
Luxemburg			x		Rwanda*	x			
Macau*				x	St. Christ. & Nevis*				
Madagascar*	x				St. Lucia*				
Malaysia*		x			St. Vincent & Grenadines*				
Malawi*	x				Senegal*				
Maldives*				x	Sierra Leone*	x			
Mali*	x				Singapore*				
Malta*					Slovakia**				
Morocco*					Slovenia**				
Mauritius*					Solomon Islands*	x			
Mauritania*	x				South Africa*		x		
Mexico*			x	x	Spain			x	
Mongolia**					Sri Lanka*				x
Mozambique*	x				Swaziland				
Myanmar*	x				Sweden				
Namibia					Switzerland			x	
Netherlands			x		Surinam*				
New Zealand		x	x		Tanzania*	x			
Nicaragua*					Thailand*		x		x
Niger*	x				Togo*	x			
Nigeria*					Trinidad & Tobago*				
Norway			x		Tunisia*				
Pakistan*				x	Turkey*				
Panama*					Uganda*	x			
Papua New Guinea*					United Arab Emirates*				
Paraguay		x		x	United Kingdom				
Peru*				x	United States				
Philippines*		x			Uruguay*		x		x
Poland**			x		Venezuela*				
Portugal			x		Zambia*	x			
Qatar*					Zimbabwe*				

\* Developing Economies

\*\* Transition and Other

Note: Turkey left the ITCB in 1996

<sup>1</sup>: International Textile and Clothing Bureau

**APPENDIX**  
**SUMMARY OF URA IMPLEMENTATION ISSUES**

**Agriculture:** (1) Market Access issues, including the high tariff level, and restrictive impact of tariff quotas; (2) export subsidies and domestic support programs tend to undermine competitive positions of efficient developing country exporters; similar effects result from the lack of international disciplines in the use of export credits. (CAIRNS, ASEAN, Egypt); (3) developing countries need greater flexibility in implementing reductions of domestic support and the way to do it (Egypt, India, Pakistan).

**Services:** (a) Provisions regarding increasing participation of developing countries in services trade and access to technology have not been effective in increasing service exports from these countries (Brazil, Egypt, India, ASEAN, Peru), (b) need to work on safeguards provisions (several Latin American countries); (c) lack of sufficient progress in movement of natural persons mode( Egypt, Turkey).

**Market Access and Industrial Tariffs :** tariff peaks, escalation continue to limit access in certain sectors ( Brazil, Senegal).

**Textiles :** (1) While developed countries implemented the letter of the ATC, the way they did it, did not result in meaningful liberalization of the sector or growth in textile imports (ITCB members, ASEAN, African group); (2) There was excessive resort to the special safeguard provisions of the ATC as well as excessive use of other trade remedies, e.g. antidumping (ITCB, ASEAN, several others); (3) special interests of small exporters or LDC not being adequately addressed (ITCB).

**Antidumping:** (1) Unfair use of anti-dumping measures compromising benefits from UR trade liberalization ( Brazil, India, ASEAN, Egypt, Korea, Pakistan); (2) exploration of constructive alternatives to AD for developing countries (Article 15) not implemented; (3) different and more restrictive standard of judicial review (Article 17) inappropriate ( ASEAN, India, Cuba, India, Pakistan).

**Subsidies:** Need to increase flexibility in the use of export subsidies for developing countries (India, Egypt, several Central American and Caribbean countries).

**TBT,SPS :** (1) Excessive levels of protection resulting in market access barriers (ASEAN, Brazil, Costa Rica, India, Pakistan, Venezuela); (2) inadequate participation of developing countries in standards

setting bodies resulting in standards that do not take into account developing country situations (ASEAN, Egypt, India).

**TRIPS** : (1) difficulties of implementation of commitments by 2000 (Brazil, Egypt); (2) asymmetry in the protection provided to innovators relative to consumers; (3) need to enhance protection of indigenous technology ( India).

**DSM**: (1) Limited access to DSM by developing countries because of lack of specialized expertise, high costs of litigation ( Brazil, Cuba, Egypt, India, Peru, Senegal, Uruguay); (2) procedural changes needed to take into account of limited institutional capacity of developing countries ( India).

**S&D**: (1) need to make "best efforts " provisions of various agreements more operational ; (2) adequacy of thresholds for developing countries need to reconsidered ( Egypt, South Africa).

**Technical Assistance** : (1) Inadequacy of assistance levels mentioned in following areas: SPS, TBT, TRIPS, DSB, Least developed Countries in general ( various countries) (2) need to increase level of TA from WTO regular budget (Tanzania, Hong Kong, China).

**Transition Periods** . Transition periods excessively optimistic in some agreements; need review for consistency with developing country capacity to implement (Egypt, South Africa).

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